

# ***Programmatic Agreement — Implementation of Section 106 for Federal-Aid Highways***

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## **Programmatic Agreement**

Between the Federal Highway Administration  
the Washington State Department of Transportation  
the Advisory Council on Historic Preservation  
and the Washington State Historic Preservation Officer  
Regarding Implementation of the Federal Aid Highway Program  
in Washington State

**Whereas**, the Federal Highway Administration (FHWA) administers the Federal Aid Highway Program in Washington State authorized by 23 U.S.C. §§ 101 et seq., through the Washington State Department of Transportation (WSDOT) (23 U.S.C. § 315); and,

**Whereas**, the FHWA has determined that the Federal-Aid Highway Program may have an effect upon properties included or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council) and the Washington State Historic Preservation Officer (SHPO) pursuant to Section 800.14 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and,

**Whereas**, WSDOT maintains cultural resource staff and consultants meeting the Secretary of Interior's Professional Qualification standards in the fields of archaeology, history and architectural history; and,

**Whereas**, WSDOT participated in the consultation and has been invited to execute this Programmatic Agreement,

**Now, therefore**, the FHWA, the Council and the SHPO agree that the Federal Aid Highway Program shall be administered in accordance with the following stipulations to satisfy the FHWA Section 106 responsibility for all aspects of the program.

## **STIPULATIONS**

FHWA shall ensure that the following measures are carried out:

### **1. Purpose and Scope**

- A. This Programmatic Agreement sets forth the process by which FHWA with the assistance of WSDOT will meet its responsibilities for undertakings pursuant to Sections 106 and 110 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f).
  - B. FHWA Responsibilities - In compliance with its responsibilities under the NHPA, and as a condition of its award to WSDOT of any assistance under the Federal Aid Highway Program, FHWA will ensure that WSDOT carries out the requirements of 36 CFR Part 800 and applicable Council standards and guidelines for undertakings subject to this agreement. FHWA will be directly responsible for initiating consultation on individual projects with tribal governments pursuant to 36 CFR 800.2(c)(2) and (3).
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- C. WSDOT Responsibilities - Pursuant to this agreement, WSDOT will ensure that all cultural resource staff and/or consultants, employed under its contract to conduct work in the field of cultural resources, meet the qualifications set forth in the Secretary of Interior's Professional Qualifications Standards for such work. Annual Review Meetings shall be conducted for the WSDOT's regions with SHPO or its representatives and FHWA, to review upcoming projects and to update staff on any changes to Section 106, SHPO coordination and/or Cultural Resources processes.

## **2. Projects Exempted from Review**

The following types of undertakings are activities in which WSDOT routinely utilizes Federal Aid highway funds. These projects generally do not affect historic properties, provided they are limited to the activities specified and are not part of a larger project within or adjacent to a historic property or historic district. These types of activities shall not require Section 106 consultation with the SHPO:

- A. All work to be done on bridges of the National Highway System (NHS) and non-NHS state highways which are less than 40 years old, unless an inventory has shown the bridge to be exceptionally significant.
  - B. All work within interchanges and within medians of divided highways unless the median has been undisturbed by construction.
  - C. All work between a highway and an adjacent frontage road, unless the area between is undisturbed.
  - D. Replacement or extension of culverts and other drainage structures with waterway openings of 100 square feet (9.3 square meters) or less and which *do not* extend beyond previous construction limits.
  - E. Roadway surface replacement, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking where there will be no expansion of wearing surface, unless within a historic district.
  - F. Installation of new lighting, signals, and other traffic control devices, and replacement or repair of lighting, signals, and traffic control devices where the existing units were installed less than 50 years ago, except if the project is immediately adjacent to, or located within, eligible bridges, historic properties, or historic districts.
  - G. Installation, replacement, or repair of safety appurtenances such as guardrails, barriers, glare screens, and energy attenuators (except on National Register listed or previously determined eligible bridges, properties, or districts).
  - H. Fencing, including salvage yards, provided no grading or other landscaping is involved.
  - I. Landscaping on fillslopes and backslopes only. All landscaping beyond toe of fillslopes or beyond top of backslope must be reviewed.
  - J. Repair or replacement in kind of curb and gutter, sidewalk and catch basins on the same location except the following: Replacement projects and construction of handicapped access ramps projects adjacent to National Register eligible or listed properties.
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- K. Railway crossing signs and signal installation or modification and surface improvement.
- L. Emergency structural repairs to maintain the structural integrity of a bridge (except National Register listed or eligible bridges), roadway overlays, and painting. Bridge reconstruction which does not include roadway widening or modification of existing piers and abutments, but which may include bridge repairs, deck replacement or repair, railing repair and other maintenance work.
- M. Construction of turning lanes and pockets, auxiliary lanes (e.g., truck climbing, acceleration and deceleration lanes) and shoulder widening where only placement of fill material is involved, or within an area previously disturbed by vertical and horizontal construction activities.
- N. Placement of fill material on the side slopes of intersection crossroads and accesses for purposes of flattening these slopes to meet safety criteria, provided that no topsoil is removed beyond the area of previous horizontal and vertical disturbance.
- O. Hazardous waste removal and disposal from within an area previously disturbed by vertical and horizontal construction activities, which constitute a public hazard and which require immediate removal.
- P. Placement of riprap within an area previously disturbed by vertical and horizontal construction activities, to prevent erosion of waterways and bridge piers.
- Q. Routine roadway, roadside, and drainage system maintenance activities necessary to preserve existing infrastructure and maintain roadway safety, drainage conveyance, and stormwater treatment in previously disturbed areas.

### **3. Review**

For those projects not exempt from review under terms of Stipulation 2, the following process shall be followed:

#### **A. Initiation of Section 106 Process - 36 CFR Part 800.3**

The WSDOT will be responsible for establishing the undertaking and defining the area of potential effect (APE). Prior to defining the APE, the WSDOT shall request the FHWA to initiate consultation with appropriate tribal governments. The WSDOT shall identify and invite other appropriate parties (such as local governments) to participate in the consultation.

#### **B. Identification of Historic Properties - 36 CFR Part 800.4**

The WSDOT will be responsible for identifying all historic properties within the APE, and evaluating the eligibility of any historic properties for the National Register of Historic Places. These activities will be carried out in consultation with the SHPO and any consulting parties, in accordance with 36 CFR Part 800.4. All cultural resources, including landscapes and traditional cultural places identified in the APE, will be examined for their integrity and eligibility in accordance with the criteria for listing in the National Register of Historic Places.

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### **C. Finding of No Historic Properties Affected**

If WSDOT determines that no historic properties will be affected by the undertaking, the finding and documentation will be forwarded to the SHPO for concurrence. Copies of this documentation will be provided to all consulting parties. If the SHPO does not concur with WSDOT's findings, the documentation will be submitted to FHWA for resolution. If, through consultation, the FHWA, the SHPO and WSDOT reach consensus, the process will move forward in accordance with this agreement, either to a finding of effect or documenting that no historic properties are affected. If consensus is not achieved the undertaking will not be developed under this agreement, but instead will proceed in accordance with 36 CFR Part 800.3 through 800.6.

### **D. Finding of Effect**

1) If the WSDOT determines, and the SHPO concurs, that historic properties will be affected by the undertaking, the WSDOT shall apply the Criteria of Adverse Effect, 36 CFR Part 800.5(a)(1). If the WSDOT determines that the undertaking will have no adverse effect on historic properties, it will notify the SHPO in writing. The SHPO will review this determination and provide written comments to the WSDOT within 30 calendar days after receipt of the WSDOT's finding and supporting documentation as required by 36 CFR Part 800.11. If the SHPO concurs with the WSDOT's no adverse effect determination, the WSDOT shall document that finding, make it available to the consulting parties and for public review, and proceed with the undertaking as planned. If the SHPO objects to the WSDOT's finding, the SHPO will indicate the reasons for nonconcurrence and the WSDOT and the SHPO will consult further to resolve this matter, either by identifying project alternatives that may result in the undertaking having no adverse effect on historic properties or proceeding in accordance with stipulation 3.D.2. of this agreement.

- 2) **Finding of Adverse Effect** - If the WSDOT determines that the undertaking will have an adverse effect on historic properties, they will notify FHWA and FHWA will ensure the Section 106 process is completed in accordance with 36 **CFR 800.6**.

## **4. Historic Bridges**

- A. WSDOT shall use the bridge list developed by the Historic Bridge Inventory to determine the eligibility of bridges. All bridges considered not eligible for the National Register will not require further evaluation, unless the passage of time, changing perceptions of significance, or incomplete prior evaluations necessitate re-evaluation of their eligibility status.
  - B. WSDOT shall consult with SHPO to market appropriate bridges. "Category 2 bridges" is a classification used only in the 1980 Historic Bridge Inventory to represent bridges constructed prior to 1940 that were noteworthy but not National Register eligible. In the event the Category 2 bridges cannot be sold, WSDOT agrees to take large format (4X5 inch or larger) black and white archivally processed photographs of these bridges before they are demolished or rehabilitated, and provide a copy of these photographs to the SHPO.
  - C. WSDOT shall consult with the SHPO on the development of a book for the general public on Washington's historic bridges. Development of this book shall be considered adequate mitigation for future replacement of the Category 2 bridges built 1940 or earlier, which will not be subject to further review for National Register eligibility.
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- D. Bridge replacement projects that require a change in alignment, beyond previous construction disturbance, shall undergo a review as per 36 CFR Part 800.
- E. Bridge replacements in historic districts shall also undergo individual review under 36 CFR Part 800, as they may be contributing elements of a historic district.

## **5. Monitoring**

The Council and the SHPO may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested. The FHWA and WSDOT shall cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities.

## **6. Terminate, Modify, and Amend**

Any party to this Programmatic Agreement may terminate it for cause by providing thirty (30) days written notice to the other parties, provided that the parties shall consult during the period prior to termination to seek agreement on amendments or other action that would avoid termination. In the event of termination, the FHWA shall conduct individual project review pursuant to 36 CFR Part 800.

All parties to this agreement agree to conduct a review of its effectiveness no earlier than six months and no later than 15 months after its initiation. A review may result in mutually agreed upon modifications to the stipulations listed above.

Execution and implementation of this Programmatic Agreement evidences that the Federal Highway Administration has afforded the Council an opportunity to comment on this Programmatic Agreement and that FHWA has taken into account the effects of the undertakings on historic properties.

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Division Administrator  
Federal Highway Administration

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State Historic Preservation Officer  
Washington State Office of Archaeology  
And Historic Preservation

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Chair  
Advisory Council on Historic  
Preservation

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Secretary of Transportation  
Washington State Dept. of Transportation

Effective 7/18/00

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